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Mexico: Amparo lawsuits and their implementation in the legal system
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The basis for an *amparo* lawsuit (*juicio de amparo* or *juicio de garantías*) can be summarized as a guarantee of protection of an individual's constitutional rights (Lawyer 7 Dec. 2007; Mexico Aug. 2005, 200 note 33). The term *amparo*, which has no equivalent in British or American law (Mexico Aug. 2005, 200 note 33), means "shelter" or "protection" (Brewer-Carías Oct. 2007, 12; *Lexis English Spanish Legal Dictionary* 1991, 58).

This protection is provided for under Mexico's constitutional law and the Amparo Law, developed in accordance with articles 103 and 107 of the Political Constitution of the United Mexican States (*Ley de amparo, reglamentaria de los artículos 103 y 107 de la Constitución política de los Estados Unidos Mexicanos*) (Mexico 5 Feb. 1917, Art. 103, 107; Mexico 10 Jan. 1936).

The rights involved in an amparo lawsuit are not specified; however, they correspond but are not limited to the rights set out in the first 29 articles of the Mexican constitution (Baker 1971, 92 and 93; US n.d., Sec. II.B.1).

Private issues are, however, excluded from amparo lawsuits (Lawyer 7 Dec. 2007; Mexico 10 Jan. 1936, Art. 1). For an amparo lawsuit to be founded, a government authority that is legally recognized or that has public power by virtue of de facto circumstances must be responsible for violating rights guaranteed under the constitution (Zamora 2004, 264; Baker 1971, 94). More specifically, the party filing the suit must demonstrate that a public authority is responsible for the injury against them (Zamora 2004, 265; Baker 1971, 95) and that the injury is not irreparable (Mexico 10 Jan. 1936, 73.IX). An executed death sentence therefore does not allow for such lawsuits (Baker 1971, 95).

With regard to government action, the Amparo Law can apply to almost all acts inasmuch as the protection of a constitutional right is disputed (Zamora 2004, 258; Lawyer 7 Dec. 2007; Mexico Oct. 1996, Sec. 8).

When a judge certifies an amparo lawsuit, article 76 of the Amparo Law limits the effect of the decision to only the people who are seeking protection (Mexico 10 Jan. 1936, 76). The decision is made without making any ruling on the law or act that gave rise to the proceedings (Mexico 5 Feb. 1917, 107.II). This provision is also called the *Otero* clause (*Fórmula Otero*) (Zamora 2004, 262; US n.d., Sec. II.B.2; Almanza Vega 1994, 21).

Types of amparo

There are two types of amparo: direct amparo (*amparo directo* [also called *amparo uniinstancial*]) and indirect amparo (*amparo indirecto* [also called *amparo biinstancial*]) (Mexico Aug. 2005, 200; Zamora 2004, 266 and 267; Almanza Vega 1994, 89, 90 and 109). The differences between the two concern procedures and jurisdiction (Mexico Aug. 2005, 200; Zamora 2004, 266). The authority responsible in direct amparo suits is the Collegiate Circuit Court (Tribunal Colegiado de Circuito) (Mexico 10 Jan. 1936, Art. 158; Zamora 2004, 267; Almanza Vega 1994, 109; see also Mexico 5 Feb. 1917, 107.V) and, exceptionally, the Supreme Court of Justice (Suprema Corte de Justicia) (Mexico 5 Feb. 1917, 107.V.d). In indirect amparo suits, the Collegiate Circuit Court and the Supreme Court of Justice can intervene in proceedings presented before a lower court, such as a district court (juzgado de distrito) (Mexico 5 Feb. 1917, 107.VI; Zamora 2004, 266; Almanza Vega 1994, 90; see also Mexico 10 Jan. 1936, Art. 114).

In criminal cases, the high authority of the court (*superior del tribunal*) that is alleged to have violated the right is also of competent jurisdiction (Mexico 10 Jan. 1936, art. 37). This helps expedite amparo suits related to criminal proceedings (Baker 1971, 91).

In each case, a person can file an amparo suit only when all means of appeal have been exhausted or when there are no means of appeal (Mexico 5 Feb. 1917, 107.III; Mexico 10 Jan. 1936, 73.XIII-XIV; Zamora 2004, 265).

There are five categories of amparo according to subject matter (Zamora 2004, 266 and 267):

1. Amparo against arbitrary detention (*amparo habeas corpus*) (Zamora 2004, 267; Brewer-Carías Oct. 2007, 13).

A writ of *habeas corpus*, as defined by the Department of Justice Canada, is [Department of Justice Canada English version] "a request that a person arrested be brought into a court or before a judge to determine if the imprisonment is lawful" (Canada n.d.).

Under this procedure, an aggrieved detainee can contest the validity of an arrest and obtain an order of release if the arrest is not justified (UN 19 Dec. 1999, para. 65). This recourse is futile when the army or police does not recognize the detention or arrest of a person (UN 19 Dec. 1999, para. 65). The procedure would, however, be relevant in cases of detention and prolonged interrogations by police without valid reason or in cases of torture committed by military forces (Vargas n.d.).

In a telephone interview with the Research Directorate, a lawyer who had been a judge in amparo cases in Mexico City stated that, in the case of a secret (*incomunicado*) detention, the detainee's family would have recourse to amparo as an interested party (Lawyer 7 Dec. 2007; see also Mexico 10 Jan. 1936, 5.III).

According to the same source, amparo cases relating to torture and arbitrary detentions were the most common type of amparo suits until the creation of human rights commissions, which, since 1990, have been responsible for making recommendations in cases of torture and arbitrary detentions (Lawyer

7 Dec. 2007). Amparo against arbitrary detentions is an example of indirect amparo (Zamora 2004, 267).

2.Amparo against laws (*amparo contra leyes*) (Mexico 10 Jan. 1936, 114.I; Zamora 2004, 266).

In a suit of this kind, a private individual or legal entity can contest any legal instrument issued by the federal legislature that they believe violates their fundamental rights under the constitution (Lawyer 7 Dec. 2007). They can also contest the constitutionality of federal and state legislation (Baker 1971, 267). Amparo against laws is another example of indirect amparo (Zamora 2004, 266).

3.Administrative amparo (*amparo administrativo*) (Mexico 5 Feb. 1917, 107.III.a; Zamora 2004, 267; Brewer-Carías Oct. 2007, 11).

Administrative amparo is the judicial review of administrative actions (Brewer-Carías Oct. 2007, 11). Judicial review, according a Canadian law dictionary, allows for the verification of the legality of decisions rendered, particularly those issued by the public administration, and for ensuring that the public administration has not exceeded its jurisdiction (*Dictionnaire de droit québécois et canadien* 1994, 135).

An application for amparo can delay the implementation of a public administration decision until there is a final decision in the amparo suit (Mexico 10 Jan. 1936, Art. 170; Zamora 2004, 265).

This type of amparo can, for example, be used to contest illegal expropriations carried out by federal authorities (Almanza Vega 1994, 41).

Administrative amparo is also an example of indirect amparo (Zamora 2004, 267).

4.Agrarian amparo (*amparo agrario*) (Mexico 10 Jan. 1936, Art. 212; Zamora 2004, 267; Brewer-Carías Oct. 2007, 11).

This kind of amparo protects rural residents (Brewer-Carías Oct. 2007, 11) who have rights over common lands (*ejidos*) (Almanza Vega 1994, 253). These kinds of suits challenge decisions that are not rendered by courts of law (Zamora 2004, 266-267). Agrarian amparo is another example of indirect amparo (Zamora 2004, 267).

5.Judicial amparo (*amparo judicial or amparo casación*) (Mexico 5 Feb. 1917, 107.III.a; Mexico 10 Jan. 1936, 114.III; Zamora 2004, 267; Brewer-Carías Oct. 2007, 11).

According to a Canadian law dictionary, a reversed decision (*décision en cassation*) quashes an illegally or improperly rendered decision (*Dictionnaire de droit québécois et canadien* 1994, 76). An amparo lawsuit can challenge a court-issued procedural ruling, an interlocutory decision or a final decision (US n.d., Sec. II.b.3).

This kind of amparo can, for example, be used when a judge has erred in interpreting the facts of a legal action and when that interpretation is a crucial

element of the judge's conclusions (Almanza Vega 1994, 115).

Judicial amparo is an example of direct amparo (Zamora 2004, 267), except when an interlocutory decision or procedural ruling is being challenged (US n.d., Sec. II.B.3).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection.

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